

ALBERT J. PIRRO, JR.
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October 18, 2010

Via Federal Express

National Labor Relations Board
1099 14th Street N.W.
Washington, DC 20570-0001

Re: Parsys, Inc., Employer and Julia Odle, an Individual Petitioner and
United Federation of Special Police and Security Officers, Inc.,
Local 639 and The Federal Contract Guards of America, FCGOA,
Intervenor, Case No. 2-RD-1589, Notice of Exceptions to ALJ Decision

Dear Sir or Madam:

PLEASE TAKE NOTICE that the following exceptions are hereby filed with the National Labor Relations Board to the Decision in the above-referenced matter (Case No. 2-RD-1589) of Raymond P. Green, Administrative Law Judge, dated October 4, 2010:

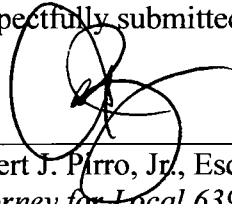
1. The decision is arbitrary and capricious; and
2. The decision is contrary to the record before the Administrative Law Judge; and
3. The decision was made in violation of law and lawful procedure; and
4. The record clearly demonstrates that the threats and intimidation did in fact occur on July 14, 2010 in the presence of employees who were eligible voters for the election held on July 20, 2010; and
5. Based on the record, those threats and intimidation were of sufficient nature to create an atmosphere of fear and coercion; and
6. There was no basis in the Record for the Administrative Law Judge to find that such threats and intimidation were “unlikely” to affect the outcome of the election held on July 20, 2010; and

7. The Record demonstrates that the threats and intimidations which created an atmosphere of fear and coercion started while, at lease, thirteen (13) eligible voters were present and cumulated in an actual physical confrontation as those eligible voters were in the process of leaving the scene of that confrontation and which could have and, in fact, did affect the outcome of the election.

Enclosed herewith is a copy of the revised and amended Objections, dated July 22, 2010 filed by United Federation of Special Police and Security Officers, Inc., Local 639, the incumbent representative, a copy of the Notice of Hearing on Objections, dated September 2, 2010, issued by Celeste J. Mattina, Regional Director, Region 2, as well as, a copy of the Decision on Objections by the Administrative Law Judge, dated October 4, 2010.

Dated: White Plains, New York
October 18, 2010

Respectfully submitted,



Albert J. Pirro, Jr., Esq.
*Attorney for Local 639,
United Federation of
Special Police and Security
Officers, Inc.*
1 North Lexington Avenue
White Plains, NY 10601
(914) 287-6444

To: Celeste J. Mattina (via first class mail)
Regional Director, Region 2
26 Federal Plaza, Room 3614
New York, New York 10278

William S. Massey, Esq. (via first class mail)
Attorney for Petitioner
817 Broadway, 6th Floor
New York, New York 10003

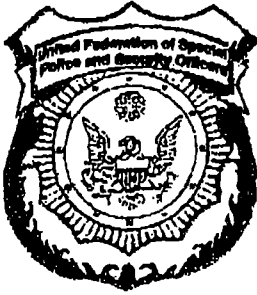
Richard M. Greenspan, Esq. (via first class mail)
Attorney for FCGOA
220 Heatherdall Road
Ardsley, New York 10502

Ralph Purdy (via e-mail)

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United Federation of Special Police & Security Officers, Inc.

540 North State Road

Briarcliff Manor, New York 10510

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Dale White

TO: Robert Guerra, Esq.
Board Agent Region #2
National Labor Relations Board

FROM: Ralph Purdy

RE: Case No. 2-RD -1589 Parasys

DATE: July 22, 2010

Please accept this communication as a revised and amended objection by the United Federation of Special Police & Security Officers, Inc., to the opening of the ballot box and publishing the results of the election in this case.

Due to the fact there was a Unfair Labor Practice Charge filed in this election Case No. 2-CB-22669 by the Federal Contract Guards of America on July 15, 2010 the ballot box was to be sealed and the ballots were to be impounded and held until this Unfair Labor Practice Charge was adjudicated.

Both the UFSPSO and FCGOA sought direction from the NLRB regarding this matter and it was confirmed that the election would continue due to the timing and the ballot box would be impounded until the case was adjudicated.

Today I received further information regarding the events of July 14, 2010 that led to the ULPC #22669 from one of the UFSPSO Business Agents who was present during the events that led to the charges.

UFSPSO had assigned two business agents to Battery Park that afternoon at approximately 4:30pm to address the members of our Local 639. Arrangements had been made for them to address the employees after work hours within the Battery Park tent. A Paragon Security Officer denied them access to the work site due to the fact he allegedly had not been notified that the Union (UFSPSO) was authorized to meet with the membership. He barred their entrance to the premises. The employees punched out for the day and this same Security Officer led them to a

Toll-Free Telephone Number: (800) 227-4291

Web Site: www.securityfederation.com

Email: mailroom@securityfederation.com

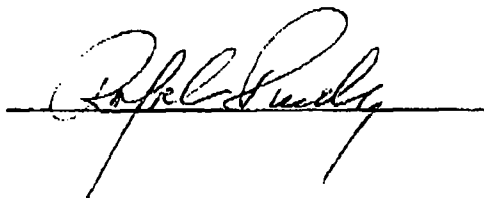
UFSPSO ELECTION OBJECTION CASE NO. 2 CB 1589 Parasys Page #2

Clearing outside the Battery Park Tent to where a SEIU 32BJ Organizer Alvin Carter was waiting. At this point in time our Business Agents realized that the Security Officer was working with SEIU 32BJ Organizer Carter. Our business agents observed SEIU 32BJ Organizer Carter unfurl a banner and the UFSPSO Business Agent attempted to take a photograph of the banner and the people behind the banner wherein SEIU Organizer Carter strongly objected to any photos being taken and became very agitated.

FCGOA President Guy James and one of his associates were also present. SEIU 32BJ Organizer Carter became more agitated and used profanity yelling at both the representatives of UFSPSO and FCGOA and threatened bodily harm and personal violence to the Union representatives of FCGOA and UFSPSO. It should also be noted that SEIU 32BJ is not on the ballot in this election and was urging the members of UFSPSO to vote "NEITHER UNION". This being undue influence by a labor union not authorized to be on the ballot and attempting to influence the vote of NO UNION.

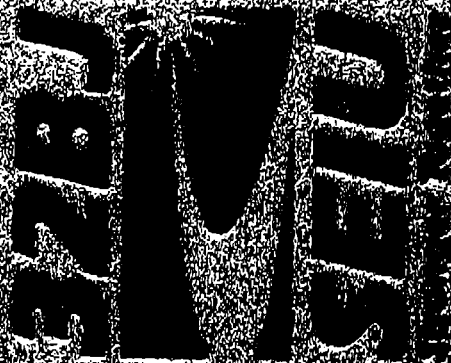
Since the election has been compromised by the foregoing actions, I respectfully request that the election be set aside until CASE 2 CB – 22669 be adjudicated.

Thank you for your attention to this matter.

A handwritten signature in black ink, appearing to read "Albert J. Pirro Jr.", is written over a horizontal line.

CC: Albert J. Pirro Jr. Counsel UFSPSO

Guy James, President FCGOA



ALVIN CARTER

Organizer

SERVICE EMPLOYEES INTERNATIONAL UNION, CIO

1011 Avenue of the Americas • New York, NY 10013-1991
845-800-8457 • Fax 212-388-3777 • dcarter@seu32bj.org

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2

PARASYS, INC.

Employer

Case No. 2-RD-1589

and

JULIA ODLE, An Individual
Petitioner

and

UNITED FEDERATION OF SPECIAL POLICE
AND SECURITY OFFICERS, INC., LOCAL 639
Union

and

THE FEDERAL CONTRACT GUARDS
OF AMERICA, FCGOA
Intervenor

NOTICE OF HEARING ON OBJECTIONS

Pursuant to a Decision and Direction of Election issued by the undersigned in Case No. 2-RD-1589 on June 16, 2010, an election by secret ballot was conducted on July 19, 2010, and July 20, 2010, in the following unit of employees:

All full- time and regular part-time security officers, including sergeants, employed by the Employer at Federal sites located on Ellis Island and Liberty Island and at Battery Park Coast Guard Station and Liberty State Park, performing guard duties as defined in Section 9(b)(3) of the National Labor Relations Act, but excluding all other employees, including office clerical employees, managerial personnel, and supervisors (lieutenants and captains) as defined in the Act and all other personnel.

The tally of ballots, which was made available to the parties at the conclusion of the election on July 20, 2010, showed the following results:

Objection 3: Since on or about July 2, 2010, the Employer, by and through its agents and representatives, has aided 32BJ in its efforts to destroy the "laboratory conditions" necessary for the conduct of a free and fair election. Such efforts included statements to employees by agents of the Employer to the effect that the Employer would recognize 32BJ as the employee's bargaining representative.

Objection 4: By this and other acts, the Employer and 32BJ interfered with the conduct of the election and the rights of employees to exercise their vote in an atmosphere free from restraint, coercion and interference, warranting the setting aside of the election and the conducting of a new election.

Pursuant to Section 102.69 of the Board's Rules and Regulations, an investigation of the objections was conducted. During the investigation, the parties were afforded a full opportunity to submit evidence bearing upon the issues.

After duly considering the evidence secured during the administrative investigation of the objections and the statements and positions of the parties with respect hereto, I have concluded that Objection 1 of FCGOA's objections, and Local 639's related Objection 2, raise substantial and material factual issues which best may be resolved on the basis of record testimony.² Accordingly,

IT IS HEREBY ORDERED that a hearing be held before a duly designated Administrative Law Judge, for the purpose of receiving testimony with respect to the issues raised by FCGOA's Objection 1, and Local 639's Objection 2.

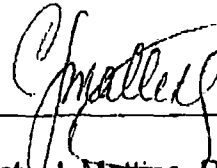
IT IS FURTHER ORDERED that the Administrative Law Judge, duly designated for the purpose of conducting such hearing, shall prepare and cause to be served upon the parties a report (or decision) containing findings of fact, including resolutions of credibility, and recommendations to the Board concerning the disposition of FCGOA's Objection 1, and Local 639's Objection 2. Within 14 days of the issuance of such report (or decision), any party may file exceptions thereto with the Board. Immediately upon filing of such exceptions or answering briefs to the exceptions, the party filing same shall serve a copy on the other

² FCGOA has requested permission to withdraw its Objections 2, 3, and 4. Local 639 has requested permission to withdraw its objection that the election should be set aside because SEIU 32BJ urged employees to vote "Neither Union." These requests are hereby approved.

parties and me. If no exceptions are filed, the Board may decide the matter forthwith upon the record or may make other disposition of the case.

YOU ARE HEREBY NOTIFIED that, pursuant to Sections 102.62 and 102.69 of the Board's Rules and Regulations, on Monday, September 13, 2010, at 9:30 a.m, and on consecutive days thereafter, until completed, a hearing shall be conducted at 120 West 45th Street, 14th Floor, New York, New York, at which time and place the parties will have the right to appear in person, or otherwise, and give testimony.³

Dated at New York, New York
September 2, 2010



Celeste J. Mattina, Regional Director
National Labor Relations Board
Region 2
26 Federal Plaza, Room 3614
New York, New York 10278

³ Pursuant to the provisions of Sections 102.69(i) and 102.65(c) of the Board's Rules and Regulations, any party may request from the Board special permission to appeal the direction of a hearing in this matter. Such request shall be filed promptly, in writing, and shall briefly state the grounds relied upon.

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
NEW YORK BRANCH OFFICE**

PARASYS, INC.
Employer

and

Case No. 2-RD-1589

JULIA ODLE, An Individual
Petitioner

and

**UNITED FEDERATION OF SPECIAL POLICE
AND SECURITY OFFICERS, INC., LOCAL 639**
Union

and

**THE FEDERAL CONTRACT GUARDS
OF AMERICA, FCGOA**
Intervenor

*William S. Massey, Esq., Counsel for
the Petitioner*

*Paul David Sirignano, Esq. Counsel for
Local 639*

Jason R. Laks, Esq. and Mathew P.

Rocco, Esq., Counsel for the Intervenor

DECISION ON OBJECTIONS

Raymond P. Green, Administrative Law Judge. I heard this case on September 13, 2010.

The Petition in this case was filed by Julia Odle on May 25, 2010 seeking an election among the security officers of Parasys Inc., which has, since the election, been taken over by Securitas Inc. At the time this petition was filed, United Federation of Special Police and Security Officers Inc., Local 639 represented the guards who were employed by Parasys. Local 639 therefore was allowed to intervene in the representation case as it was a party to a contract with the employer.

In addition, the Federal Contract Guards of America, FCGOA was permitted to intervene in the representation case, presumably because that organization presented to the Board's regional office a showing of interest represented by some form of authorization by a significant number of employees indicating that they wished to be represented for collective bargaining purposes by FCGOA.

On June 16, 2010, the Regional Director issued a Decision and Direction of Election. Pursuant to a stipulation of the parties, it was agreed that the bargaining unit should be

coextensive with the unit described in the collective bargaining agreement between the employer and Local 639. (That contract was set to expire on July 24, 2010). The unit is:

Included: All full-time and regular part-time security officers, including sergeants, employed by the Employer at Federal sites located on Ellis Island and Liberty Island and at Battery Park Coast Guard Station and Liberty State Park, performing guard duties as defined in Section 9(b)(3) of the National Labor Relations Act.

Excluded: All other employees, including office clerical employees, managerial personnel and supervisors (lieutenants and captains) as defined in the Act and all other personnel.

On July 20, 2010 an election was held and the Tally of Ballots shows that of about 85 eligible voters, 17 cast votes for Local 639, 0 cast votes for the Federal Contract Guards of America, FCGOA and 51 cast votes against any union representation. There was one challenged ballot which was not determinative of the outcome of the election.

On July 22, 2010, Local 639 filed objections to the election and on the following day, objections were also filed by FCGOA.

On September 2, 2010, the Regional Director issued a Decision directing that a hearing be held in relation only to FCGOA's Objection No. 1 and Local 639's Objection No. 2. Thus, the only issue to be litigated is an allegation that on or about July 14, 2010, representatives of Local 32B-J, SEIU threatened agents and representatives of FCGOA with physical harm in the presence of employee who were eligible voters.

Based on the entire record, including my observations of the demeanor of the witnesses and after considering the arguments of counsel, I hereby make the following

Findings and Conclusions

At first blush, it would seem that the objections filed by both of the unions that participated in the election involved alleged conduct by a third party union that did not participate in the election. Nevertheless, the testimony shows that the petitioner, Julia Odle, along with some co-workers, after having decided to oust the incumbent union, (Local 639), went to Local 32B-J in an effort to obtain representation from that labor organization. When it became evident that Local 32B-J could not participate in an NLRB election because of Section 9(b)(3) of the Act, Odle filed the decertification petition in the hope and expectation that once Local 639 was voted out, the employer would voluntarily recognize Local 32B-J. While being the petitioner in this case, Odle also was a member of an organizing committee formed by Local 32B-J that together with agents of that union began a campaign to convince the employees to vote against both of the unions that were on the ballot.

On July 14, 2010, representatives of Local 32B-J had arranged to meet with employees in a public park near the work location. This meeting was scheduled for when the shift ended at 4:30 p.m. At the same time, representatives of Local 639 had also planned to meet with employees at the work site. Finally, to complete the cast, representatives of FCGOA also appeared at the park in an effort to meet with employees.

When Local 639's representatives found that they could not enter the employer's premises to meet with employees, (as previously arranged), they walked over to where Local 32B-J representatives were meeting with a group of employees that included Odle. (The

witnesses estimated that there were between 13 and 20 employees present during this meeting). At most, the meeting lasted from around 4:30 to 5:00 p.m. At some point a banner was held by the employees that read; "We are voting neither." Later, the group of employees posed for a picture taken by Local 32B-J. When Shaun Brennon, an agent of Local 639, attempted to take his own picture, he was told by the Local 32B-J representative, Alvin Carter, that he should not do so. Brennon desisted.

At about 4:30 p.m. the two representatives from FCGOA also approached the Local 32B-J meeting and asked what was going on. When Carter said that his union was talking to the employees, Guy James the President of FCGOA told him that Local 32B-J was not even on the ballot. Carter told James that this didn't matter and asked that James not interfere with his meeting. James said he could not make such a promise and during the meeting he made a number of comments in the presence of the employees, essentially questioning how Local 32B-J could guarantee anything since they were not even participating in the election.

The events in controversy seem to have occurred either at the conclusion of the meeting or after the meeting was over. In any event, James and Local 639 representatives Hector Fajardo and Sean Brennon testified that Carter approached James in a threatening manner where he cursed and threatened to break his legs and/or punch him out. Carter for his part concedes that he did confront James and cursed at him for interfering with the meeting. He denied, however, that he threatened to assault James. And he testified that when this occurred, all of the employees, except for Odle had left the scene.

James and Brennon testified that when the threat was made, most of the employees who attended the meeting were still standing around and were in a position to witness the transaction. On the other hand, Carter and Odle testified that the only employee who was there was Odle herself. In relation to this incident, Fajardo's testimony tended to support Carter's version in that he indicated that the "threat" occurred after the banner was unfurled and the employee were dispersing. In an affidavit given to the Board on July 27, 2010, FCGOA representative Nicholas Dippolito stated:

After Carter took the picture, the employees started to leave. Carter and the other SEIU representative walked and talked to the employees as they were leaving. We continued to stand in the same place, The [SEIU] supervisor was still with us. As soon as the majority of workers left, Carter walks right up to Guy James About two employees were present at the time along with various pedestrians. Carter starts yelling profanities to James. He said I knew you were going to do this motherfucker. I will kill this motherfucker. He was talking very strongly with his face close to James' face.... Close enough to try to provoke someone. James responded by telling Carter, you don't want to start something here, just walk away. Carter was yelling and threatening for a minute or two. He also said Fuck you asshole, I told you not to intervene. I knew you were going to cause a problem. James tried to keep as calm as he could. James said; just move away, we don't want to start anything here. Carter started getting a little closer to James and he was worked up. It appeared he was looking to get into a fight. When Carter started getting closer, the supervisor got in between Guy and Carter holding Carter back...At some point during this confrontation, the two employees left the area.

Because Local 32B-J is so closely aligned in interest with the petitioner, I do not think that the standard applicable to non-parties would be appropriate. Therefore, in considering whether the acts of Carter would be sufficient to set aside this election, I conclude that although he was employed by Local 32B-J, (nominally a non-party); he was in fact acting as an agent of Odle who was a party in this representation case.

In *Taylor Wharton Harsco Corp.*, 336 NLRB 157, 158 (2001), the Board stated:

[T]he proper test for evaluating conduct of a party is an objective one- whether it has "tendency to interfere with the employees' freedom of choice." *Cambridge Tool Mfg.*, 316 NLRB 716 (1995). In determining whether a party's misconduct has the tendency to interfere with employees' freedom of choice, the Board considers: (1) the number of incidents; (2) the severity of the incidents and whether they were likely to cause fear among the employees in the bargaining unit; (3) the number of employees in the bargaining unit subjected to the misconduct; (4) the proximity of the misconduct to the election; (5) the degree to which the misconduct persists in the minds of the bargaining unit employees; (6) the extent of dissemination of the misconduct by the opposing party to cancel out the effects of the original misconduct; (8) the closeness of the final vote; and (9) the degree to which the misconduct can be attributed to the party. See, e.g. *Avis Rent-a-Car*, 280 NLRB 580, 581 (1986).

Although statements or even threats made by union or company representatives that are not directed toward employees, would not normally be grounds for setting aside an election, such threats if made in the presence of employees could be the basis for overturning an election as they could tend to create an atmosphere of fear and coercion.

In my opinion, it is probable that Carter did threaten to assault James because he felt that James interfered with his meeting. (I note that this meeting was held in a public place and James was within his rights in expressing his views to the employees in attendance. If Local 32B-J wanted to have an exclusive forum, they could have invited employees to meet elsewhere). However, I also conclude that the credible evidence shows that the confrontation between Carter and James occurred after the meeting had ended and after most of the employees had left the scene. In this regard, I conclude that at most, there were two employees present and most likely only one. (Odle).

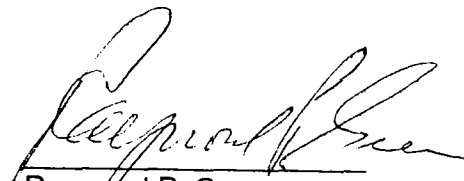
It is my conclusion that the conduct of Carter described above is insufficient in the circumstances to warrant setting aside the election. The conduct was isolated to a single event that took place in a heated moment and was witnessed by one or possibly two potential voters in a unit of approximately 85 employees. There was no evidence that an account of this incident was transmitted to other employees and it seems unlikely to me that even if it was, it could have affected the outcome of the election which was not even close.

Based on the above and the record as whole, I conclude that the Objections have no merit and should be dismissed.

ORDER

The representation case in 2-RD-1589 is to be remanded to the Regional Director of Region 2, for the purpose of issuing the appropriate Certification of Results.¹

Dated, Washington, D.C., October 4, 2010.



Raymond P. Green
Administrative Law Judge

¹ Any party may, within fourteen (14) days from the date of issuance of this recommended Decision, file with the Board in Washington, DC, an original and eight (8) copies of exceptions thereto. Immediately upon the filing of such exceptions, the party filing the same shall serve a copy thereof on the other parties and shall file a copy with the Regional Director of Region 2. If no exceptions are filed, the Board will adopt the recommendations set forth herein. Exceptions must be received by the Board in Washington by October 19, 2010.

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